DRN-3568387

The complaint

Mr M has complained about the advice he received from Portal Financial Services LLP ("Portal") to transfer his personal pension to a self-invested personal pension in 2014. He says the advice was unsuitable, not least because Portal also advised him to invest his transfer proceeds in a portfolio that he says was too high risk for him. Some of the portfolio's investments have subsequently run into trouble. Mr M holds Portal responsible for his losses.

What happened

On 6 February 2014, a fact-find of Mr M's circumstances and needs was completed. On 10 February, Portal sent Mr M its suitability report. It recommended he transfer one of his two personal pensions to a SIPP with Novia and invest in a portfolio consisting of a mix of multi-asset funds, secured bonds and cash. Portal advised Mr M against transferring his other personal pension. Mr M also had a final salary pension which Portal didn't advise on. Mr M was introduced to Portal by another organisation. He says this followed an unsolicited approach.

Mr M accepted Portal's recommendation and transferred his personal pension and invested in the recommended portfolio. He says some of the secured bonds have since failed and he has lost out financially as a result.

In 2018 Mr M complained to Portal. He said, in brief, that the transfer was unsuitable because the recommended investment portfolio was too high risk for him. He also said the charges he incurred following the transfer were too high. The complaint was referred on to us and our investigator agreed with Mr M. He upheld the complaint. As Portal didn't agree, the matter is with me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm upholding Mr M's complaint.

There were several failures on Portal's part. For a start, the answers Mr M gave to the "risk attitude profiling questionnaire" he completed suggest he had a more cautious attitude to risk than Portal thought. The suitability report said Mr M had a "balanced" attitude to risk. But the answers to the questionnaire (which I repeat in its entirety) were as follows:

1. *People who know me would describe me as a cautious person (Mr M's answer: Agree)*

2. *I feel comfortable about investing in the stockmarket (Disagree)*

3. *I generally look for safer investments, even if that means lower returns (Disagree)*

4. *Usually it takes me a long time to make up my mind on investment matters (Agree)*

5. I associate the word 'risk' with the idea of 'opportunity' (Disagree)

6. I generally prefer bank deposits to riskier investments (Agree)

7. I find investment matters easy to understand (Disagree)

8. I am willing to take substantial investment risk to earn substantial returns (Disagree)

9. I have little experience of investing in stocks and shares (Agree)

10. I tend to be anxious about the investment decisions I've made (Agree)

11. I'd rather take my chances with high risk investments than increase the amount I'm saving (Disagree)

12. I'm concerned by the volatility of stockmarket investments (Agree)

13a I feel comfortable about investing in property (Disagree)

14a I have little experience of investing in property (Agree)

15a I prefer alternative investments which are considered to be less volatile, even if it reduces liquidity (Agree)

Except for question 3, all the answers point to Mr M being a cautious investor; not the "balanced" investor Portal assessed him as. And even by Portal's own definition, Mr M wasn't a balanced investor. In its suitability report it said a balanced investor typically has "moderate" levels of financial knowledge, makes up their mind on financial matters relatively quickly, keeps up to date with financial matters, has experience of riskier assets like equities and bonds and understands risks have to be taken in order to meet long term goals. Mr M's answers don't fit this profile.

I consider this to be a breach of COBS 9.2, which says (amongst other things) that a firm must take reasonable steps to ensure a recommendation is suitable. It's difficult to argue that Portal took reasonable steps here if it has, essentially, overlooked Mr M's answers to his risk questionnaire or been careless in how it analysed his answers. The fact that a third party was involved in the assessment doesn't negate Portal's responsibilities in this area. And, for the avoidance of doubt, attitude to risk is a key consideration in an advice process such as this – something COBS 9.2 makes clear.

The lack of a robust process to assess Mr M's attitude to risk is also a breach of at least one of the Financial Conduct Authority's Principles for Businesses, specifically Principle 2 ("A firm must conduct its business with due skill, care and diligence), as well as COBS 2.1.1R ("A firm must act honestly, fairly and professionally in accordance with the best interests of its client").

Similarly, another failure was Portal's assessment of Mr M's capacity for loss. Mr M says he had a low capacity for loss. I've seen no reason to disbelieve Mr M on this, especially as this would be in keeping with his circumstances at the time. According to the fact-find completed ahead of the suitability report, Mr M was 53 and planning to take his pension at the age of 65. He was working as a warehouse manager with a basic annual salary of £11,000. He was living with his mother and didn't own a house or have any other financial assets other than his two personal pensions and one final salary pension. He had some unsecured debt.

Taking all this into consideration, it seems to me that Mr M's financial wealth would have been significantly affected by investment losses in his pensions. And I think any losses would likely have materially harmed his retirement income given the relatively short time he would have had to make back his losses before retirement, his lack of other assets to rely on and the limited capacity he would have had to increase pension contributions given his relatively modest salary. The fact-find also had a hand-written note saying that Mr M preferred "stability".

In this light, I think Mr M's capacity for loss was low. However, in the suitability report Portal doesn't give a particular clear steer on Mr M's capacity for loss – a problem in itself – but instead says his capacity for loss was suitable for the recommendation it was giving. This seems to me to be looking at things the wrong way around; far better to start with the capacity for loss and then recommend a portfolio based on that assessment. But even putting that reservation to one side, for reasons that I will come on to my view is that Portal's recommendation *wasn't* suitable for someone with a low capacity for loss.

To recap, the recommendation was for Mr M to transfer one of his personal pensions to a SIPP and invest the transfer proceeds in six bonds backed by various assets, four multi-asset funds, and cash. The bonds that were recommended, and the percentage of the portfolio to be invested in each one, were as follows (although the actual proportions invested were slightly different to what was recommended because of a slight change in transfer value and the rounding of the amounts invested to the nearest £100):

- Lakeview UK Investments: 8.49% of the transferred portfolio
- Marbella Resort & Spa: 7.92%
- Real Estate Investments USA: 8.49%
- Motion Picture Global Investments: 7.92%
- Strategic Residential Developments: 8.49%
- Tambaba Developments: 7.92%

These bonds were high risk. I say this because the suitability report refers to funds from the bonds financing, and being secured on, the building of new holiday villas, the completion of a new hotel, rights to films not yet made and plots of land with development potential. In other words, the underlying assets weren't known quantities that were already generating a predictable income stream but were rather more speculative in nature. Most of the bonds also carried exchange rate risk. And they were illiquid, something the suitability report pointed out.

A lot can go wrong with this type of investment and the potential for significant losses is far higher than would be the case for pooled funds investing in a wide range of quoted securities. This is the case even if (as Portal asserts) due diligence had been done on the bonds. The high interest rates being offered (double-digit in some cases) bears this out. And yet Mr M was advised to invest approximately 49% of his transfer proceeds in these six bonds despite being a relatively cautious investor and having a low capacity for loss. In the circumstances, I don't consider this to have been a suitable recommendation. This should, reasonably, have been apparent to Portal at the time given what it knew (or should reasonably have known) about the bonds and about Mr M.

I recognise that Mr M had other pension assets. After accounting for fees, the pension Mr M transferred had a value of just under £36,000. The personal pension he didn't transfer had a value of around £47,000 according to a valuation received just before the advice was given. It was invested in managed funds. And the fact-find recorded a transfer value of just over £9,000 for Mr M's final salary pension, which he also didn't transfer. This takes Mr M's exposure to the secured bonds down to around 19% of his *total* pension assets, with the remainder invested in more traditional pooled funds, cash or in his final salary pension.

My view is that investing just under one-fifth of Mr M's total pension (and entire financial wealth) in this way was too high a proportion given his relatively cautious attitude to risk and low capacity for loss. I would likely have thought the same even if Mr M was less cautious and had more capacity to withstand losses – for instance, even if he was truly a "balanced" investor as Portal maintains.

In coming to this conclusion, I have taken into consideration the regulator's comments on unregulated investments, specifically its 'Good and poor practice report' and 'Project Findings" from July 2010. I think its comments are relevant to Mr M's situation because his secured bonds share many of the same characteristics as the investment schemes the regulator was warning about: illiquidity, foreign currency risk and valuation difficulties for instance. The regulator said an example of good practice in this area was where a firm limited client exposure to unregulated funds to 3% to 5% of their portfolios. In this light, Mr M's exposure to the bonds in question was far too high – especially given his limited capacity for loss and cautious attitude to risk.

It's also worth noting that in the risk attitude questionnaire Mr M said he wasn't comfortable about investing in property (question 13a) and had little experience of doing so (question 14a). In this light, recommending some of the secured bonds – without any further substantive evidence of why Mr M might have come around to property-based investment – seems incongruous.

Of course, Mr M would, likely, have had an idea that some of the bonds had a property element to them. But the test here is whether Portal took reasonable steps to ensure its recommendation was suitable. And, given the available evidence, property-based investments wouldn't appear to have been a suitable option for Mr M to the extent recommended here. On a similar note, Mr M signed a declaration to say he understood that the secured bonds were illiquid and other risk warnings were also provided; useful information for Mr M to have known, no doubt, but of limited relevance when looking at the more fundamental issue of whether the bonds should have been recommended in the first place.

I recognise Portal's role here was to advise Mr M and that doing so properly can lead to recommendations that are, legitimately, outside someone's comfort zone. Mr M's answers to the risk attitude questionnaire are a case in point. They point to someone who didn't want to take on any risk. Questions 2, 6 and 12, for instance, suggest Mr M would have preferred to have invested in cash than in shares. I don't think that would have been a sensible investment strategy even for someone a little over 10 years from retirement, especially as one of Mr M's objectives (if taken at face value) was to improve the performance of his pension. So there was a balance to be struck here between recommending riskier assets than perhaps Mr M would otherwise have considered whilst recognising his caution and limited capacity to withstand losses. For the reasons given above, Portal hasn't struck this balance.

With all the above in mind, I'm satisfied there were a number of failures in Portal's advice process. Not coincidently, Portal's recommendation to Mr M wasn't suitable. I think this should, reasonably, have been apparent to Portal at the time. As such I think Portal failed to meet its regulatory requirements, in particular in relation to COBS 2.1.1R and COBS 9.2. It has also breached a number of the regulator's principles, including Principle 2 ("A firm must conduct its business with due skill, care and diligence), Principle 6 ("A firm must pay due regard to the interests of its customers and treat them fairly") and Principle 9 ("A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment").

Mr M has also complained about the charges that followed his transfer. I don't need to address these concerns because of the failings I've commented on above. These are enough in themselves for me to uphold the complaint and ask Portal to put Mr M back (as far as possible) in the position he would have been in but for Portal's advice. I set out how it should do this below.

Putting things right

My aim is that Mr M should be put as closely as possible into the position he would probably now be in if he had been given suitable advice. I take the view that Mr M would have invested differently. It's not possible to say precisely what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr M's circumstances and objectives when he invested.

What must Portal do?

To compensate Mr M fairly, Portal must:

- Compare the performance of Mr M's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- Portal should add interest as set out below.

- If there is a loss, Portal should pay into Mr M's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Portal is unable to pay the total amount into Mr M's pension, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay Mr M £200 for the distress and inconvenience he would have experienced when he became aware that some of his recommended investments had run into trouble and his retirement income had potentially been compromised as a result.

Income tax may be payable on any interest paid. If Portal deducts income tax from the interest it should tell Mr M how much has been taken off. Portal should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Novia SIPP	Still exists but some illiquid assets	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of transfer	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the actual value of the portfolio. This is complicated where assets are illiquid (meaning they could not be readily sold on the open market) as in this case. Portal should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Portal pays should be included in the actual value before compensation is calculated.

If Portal is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the actual value. Portal may require that Mr M provides an undertaking to pay Portal any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Portal will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Portal should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in. Any withdrawal from the Novia SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Portal totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

The Novia SIPP only exists because of illiquid assets. In order for the SIPP to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Portal taking over the illiquid assets, or this is something that Mr M can discuss with the provider directly. But I don't know how long that will take. Third parties are involved and we don't have the power to tell them what to do.

If Portal is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr M an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr M wanted growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different assets, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr M's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr M into that position. It does not mean that Mr M would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr M could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Portal Financial Services LLP should pay the amount calculated as set out above. Portal Financial Services LLP should provide details of its calculation to Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 July 2022.

Christian Wood
Ombudsman